

OGC Has Reviewed

13 November 1953

MEMORANDUM FOR: PERSONNEL DIRECTOR

SUBJECT : Legality of Transportation Provision in Minimum Overseas Service Agreement Executed by Staff Employees Paid from Confidential Funds Who Have Served Previously Overseas or in a Departmental Capacity

REFERENCE : Your memorandum, undated, requesting opinion regarding subject

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1. The reference attaches a copy of the standard form of agreement executed by staff employees paid from confidential funds respecting travel and transportation benefits in connection with an overseas tour of duty.

This inconsistency arises out of the deletion from the agreement of the requirement in the case of an employee who falls within the above-described category that he remain in the service of the Agency for a period of at least twelve months from the time of his arrival at his post abroad or reimburse the Agency for all expenses of his travel and transportation to such post.

2. Section 1 of Public Law 600, as amended by Public Law 830 of the 81st Congress, provides in part that "expenses of travel and transportation in connection with the transfer of officers and employees to posts of duty outside the continental limitations of the United States and return therefrom shall be allowed to the same extent and subject to the same limitations prescribed for new appointees" under Section 7 of the basic act. Section 2 of Public Law 830 prescribes as a limitation upon payment of travel and transportation expenses of new appointees assigned to posts of duty abroad that "... such expenses ... shall not be allowed unless and until the persons selected for appointment shall agree in writing to remain in the Government service for twelve months following their appointment, unless separated for reasons beyond their control and acceptable to the department or agency concerned and in case of violation of such agreement any monies expended by the United States on account of such travel and transportation shall be recoverable from the individual

concerned as a debt due the United States . . . ." To apply this quoted language to one who has previously served abroad or departmentally in a Government position requires that the statutory words "following his appointment" be construed as synonymous with the words "following his transfer". We have been unable to discover any decision of the Comptroller General, either published or manuscript, that would lend assistance in this semantic difficulty. We have informally inquired on this point from representatives of the Office of General Counsel of the General Accounting Office. We are told that the Comptroller General would construe the statutory words "following his appointment" in the case of a new appointee as meaning "following his transfer" in the case of an old employee. Although conceding that this position arguably involves "judicial legislation", it is nonetheless maintained that to hold otherwise would frustrate Congressional intent. This latter attitude is probably indisputable.

3. Accordingly, it may be said that the form of agreement currently executed by those staff employees who have previously served abroad or in a departmental position is inconsistent with Public Law 600 as amended.

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OGC/GHK:cst

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*Memorandum for the Record*

25X1A9A Conversation with [ ] regarding Air Force interpretation of application of requirements in PL 600 as amended by PL 830 respecting minimum overseas service necessary before old employee may be relieved of necessity of repaying cost of transportation overseas. Although statute refers to date of appointment as reference point for computing length of service, Mr. Vaughan says Air Force has GAO support for position date of appointment in case of new appointee equates to date of assignment in case of old employee.

SNK

25X1A9A [ ] also possible source of information on this point.

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